

## REMARKS

### STATUS OF THE CLAIMS

Claims 1-20 were presented for examination and were pending in this application. In an Official Action dated November 12, 2003, claims 19 and 20 were allowed and claims 1-18 were rejected. Applicants herein cancel, without prejudice, claims 9-16. Applicants herein add claims 21-65. Applicant herein amends claims 1-3, 5, 6, 17-20. Applicants now request reconsideration and allowance of claims 1-65.

Applicants thank the Examiner for examination of the claims pending in this application and address the Examiner's comments below.

### DRAWINGS

The Examiner objected to the drawings under 37 CFR 1.83(a), stating that the "drawings must show every feature of the invention specified in the claims. Applicants submit that the amendments to the claims herein address the Examiner's assertions as to the drawings.

### SPECIFICATION

The Examiner objects to the specification as allegedly "failing to provide proper antecedent basis for the claimed subject matter." The Examiner asserts that "at least two signal paths is electrically connected to each other is not found in the specification." Applicants respectfully traverse this ground of rejection by amendment and argument.

Applicants submit that the specification refers to "one or more signal paths" a number of times, for example in paragraph [0050] and [0057]. Paragraph [0057] additionally states that "one or more movable structures can be employed, together with one or more signal paths to create variety of MEMS switches *for switching one or more signals*" (emphasis added).

Paragraph [0057] further refers to a “cantilever beam bearing one or more contact pads for *bridging one or more gaps in one or more signal paths*” (emphasis added), thereby electrically connecting the one or more signal paths. However, to expedite prosecution, Applicants have amended the claims and Applicants submit that these amendments address the Examiner’s objection.

## **REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH**

Claims 2, 5, and 6-8 were rejected under 35 U.S.C. § 112, second paragraph, because these claims are allegedly “indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.” Applicants submit that each of the specific informalities noted by the Examiner is addressed in the amended claims. Applicants respectfully submit that all claims, including any claims dependent upon amended claims, are now sufficiently definite to be in full compliance with 35 U.S.C. § 112, second paragraph. In addition, other claims not mentioned by the Examiner have been amended to clarify the claimed subject matter.

## **REJECTIONS UNDER 35 U.S.C. § 102**

Claims 1-5, 11, 14, 16, and 18 are rejected under 35 U.S.C. § 102(a) as allegedly being unpatentable over Kellam et al. Applicants respectfully traverse this ground of rejection by amendment and argument.

In order for a reference to anticipate an invention, the reference must teach each and every element of the claimed invention. Claim 1, as amended, recites “*on the first substrate*, at

least one signal path that runs from inside the cavity to outside the cavity at two locations” (emphasis added). Claim 1 further recites “at least one movable structure *on the second substrate*” (emphasis added). Thus, Kellam et al. fails to meet all of the limitations of claim 1.

At least for the reasons stated above, Applicants respectfully submit that claim 1 as amended is patentably distinguishable over the prior art, including Kellam et al. Applicants further submit that claims 2-5, and 18, which depend from claim 1, are also patentably distinguishable over the prior art for at least the reason stated above. Claims 11, 14, and 16 are canceled herein. Withdrawal of this ground of rejection of claims 1-5, 11, 14, 16, and 18 is respectfully requested.

### **REJECTIONS UNDER 35 U.S.C. § 103**

Claims 6-10, 12, 13, 15, and 17 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kellam et al. The Examiner also takes official notice of the alleged “equivalence or obviousness of employing a gold thermocompression bonding process, providing an optimum seal ring width, employment of gold/barrier layer bonding surfaces and providing mechanical bonding stops.” Applicants respectfully traverse this ground of rejection by amendment and argument.

For the reasons stated above, claim 1 as amended, is patentably distinguishable over Kellam et al. Applicants further submit that claims 6-10, 12, 13, 15, and 17, which depend from claim 1, are also patentably distinguishable over the prior art. Thus, Kellam et al. does not teach all of the limitations of the claims, nor does the combination of Kellam et al. and the Examiner’s subject of official notice teach all of the limitations of the claims.

Additionally, Applicants respectfully traverse the grounds for the official notice taken by the Examiner. The Examiner may take official notice of “facts outside of the record which are capable of instant and unquestionable demonstration as being ‘well-known’” (MPEP § 2144.03). Kellam, et al, refers to the use of “solder rings” in the specification (for example, line 3, columns 57-58). However, as indicated in paragraph [004] of the specification in the present invention, “solder seal on the lid tends to outgas when re-flowed during the final sealing process.” In contrast, the gold thermocompression bonding of the present invention uses low outgassing materials. Thus, solder seals and gold thermocompression bonding are not interchangeable. The facts on which the Examiner bases the official notice are not “capable of instant and unquestionable demonstration as being ‘well-known,’” and it would not have been obvious to one skilled in the art to use gold thermocompression bonding at the time the invention was made.

Therefore, a *prima facie* case of obviousness is not made. Withdrawal of this ground of rejection of claims 6-10, 12, 13, 15, and 17 is respectfully requested.

## CONCLUSION

In sum, withdrawal of the pending rejections and reconsideration of the claims are respectfully requested, and a notice of allowance is earnestly solicited. If the Examiner has any questions concerning this Response, the Examiner is invited to telephone Applicant’s representative at (650) 335-7185.

RESPECTFULLY SUBMITTED,

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